Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

MFS COMMUNICATIONS COMPANY, INC. RESPONSE TO PETITIONS FOR RECONSIDERATION

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Table of Contents

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MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, hereby responds to certain of the various petitions filed with the Commission for reconsideration and/or clarification of the *First Report and Order* in the above-captioned dockets, FCC 96-325, released August 8, 1996 (the "*1st R&O*").[1]

I. THE COMMISSION SHOULD NOT REGULATE THE PROVISION OF INFORMATION SERVICES BY COMPETITIVE LECs

The Information Technology Association of America ("ITAA") has filed a Petition for Clarification in which it asks the Commission to impose new restrictions on the ability of competitive local exchange carriers ("LECs") to provide information services. The Commission

[1] MFS does not address herein various petitions for reconsideration and clarification filed by utility companies with respect to the Commission's rules on access to poles, ducts, conduits, and other rights-of-way. These issues are being addressed today in a separate filing by the Association for Local Telecommunications Services ("ALTS"), and MFS concurs with the ALTS position on these issues.

should deny this petition. To the extent that ITAA's concerns are legitimate, they are already addressed by existing rules and policies.

ITAA's petition refers to paragraph 995 of the *1st R&O*, in which the Commission determined that "telecommunications carriers that have interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3), may offer information services through the same arrangement, so long as they are offering telecommunications services through the same arrangement as well." ITAA notes that the Commission has long required facilities-based carriers that offer information services to offer the underlying transmission capacity used in providing those services to unaffiliated enhanced service providers under the same tariffed prices, terms, and conditions under which they provide such services to their own enhanced services operations.[2] ITAA requests "clarification" that this transmission-at-tariff rule applies to facilities-based competitive LECs.

The "clarification" sought by ITAA is unnecessary to the extent the transmission-at-tariff rule applies by its own terms. It is neither legally necessary, nor sound policy, for the Commission to "clarify" every new rule it issues by listing all the old rules that continue to apply as well. If the Commission tried to make a practice of "clarifying" its rules in this fashion, then it would inevitably invite parties to infer—perhaps erroneously—that any old rule not explicitly identified in such a "clarification" had been repealed by implication.

If the ITAA "clarification" is intended in any way to be more restrictive than existing rules, however, it should be rejected on the merits. First, any attempt to restrict the offering of information services by competitive LECs would be outside the scope of this proceeding, which is intended to implement Section 251 of the Communications Act. Nothing in Section 251 even indirectly refers

[2] ITAA Petition at 4, citing *Computer II Final Order*, 77 FCC 2d 384, 475 (1980), and *Interexchange Marketplace Reconsideration Order*, 10 FCC Rcd. 4562, 4580 (1995).

to or implicates the offering of information services, and any new restriction on such services should be considered only in a proceeding initiated for that purpose by the Commission. Second, the Commission correctly determined in para. 995 of the *1st R&O* that the offering of information services by competitive LECs is consistent with the pro-competition spirit of the Telecommunications Act of 1996. Any effort to restrict the efficient offering of information services by facilities-based entrants would be inconsistent with that interpretation, and contrary to the intent of Congress. Third, additional restrictions on the offering of information services by facilities-based carriers are unnecessary. A facilities-based carrier that is entering a market in competition with an incumbent LEC has no incentive to discriminate against competing providers of information services, or (for that matter) any other potential customer. The construction of a facilities-based network requires the investment of substantial amounts of capital, and any carrier that makes such an investment has a strong economic incentive to maximize the use of its network in order to recover that investment. It would be irrational for a carrier to discriminate against a potential user of that network in order to gain some ephemeral advantage in the market for information services. Any such attempted discrimination would probably backfire because the "victim" information provider would simply become a customer of a competing telecommunications carrier. The facilities-based entrant would thereby have lost a potential customer for its transmission services without having gained any real advantage in the information services market. The Commission should not squander its scarce resources on attempting to regulate competitive markets, particularly when the supposed harm being addressed by the proposed regulation is so improbable to begin with.

For similar reasons, the Commission should reject ITAA's proposal to preclude the offering of information services by resellers of incumbent LEC services. (Although ITAA refers several times to resale of incumbent LEC "capacity," it is clear from the context of the discussion at pages

6-7 of its Petition that it is actually referring to resale of incumbent LEC *services* obtained at wholesale prices.) As ITAA notes, para. 875 of the *1st R&O* concludes that wholesale discounts are available only to carriers that will provide local exchange services. A carrier that purchases local services at wholesale rates therefore must resell these services to end users in order to comply with the Commission's rules; however, nothing in those rules should preclude a reseller from offering information services *in addition to* resold local exchange services, even if both services are accessed over the same facilities. Of course, the general prohibition on unreasonable discrimination under Section 203 would require a reseller in this position to assure that its end user customers also have access to third-party information services. As long as the carrier does not engage in unreasonable discrimination, however, there is no public policy reason to limit its ability to offer information services or any other type of services to its end user customers.

II. UNBUNDLING ISSUES

A. An Incumbent LEC May Require a Requesting Carrier to Disclose Its Plans for Use of Unbundled Network Elements Only to the Extent Reasonably Necessary to Prevent Network Harm

The Local Exchange Carrier Coalition ("LECC") requests that the Commission clarify para. 382 of the *1st R&O*, which requires incumbent LECs to condition unbundled loop facilities to provide services not currently offered over such facilities, such as ISDN and xDSL transmission, to incorporate a requirement that the requesting carrier notify the incumbent LEC before using unbundled loops to provide these advanced transmission capabilities. LECC alleges that the use of digital transmission technologies on loops in the same cable sheath as analog loops could result in electromagnetic interference between loops.

MFS agrees that an incumbent LEC may require a requesting carrier to provide notice of its intended use of an unbundled loop to provide digital transmission where such use could cause

interference with other loops. However, the incumbent LEC should not have unfettered discretion to demand information about how the requesting carrier intends to make use of unbundled loops (or any other network element). Incumbent LECs should be able to require such information only where reasonably required to prevent network harm, such as electromagnetic interference between loops. The Commission should adopt a general rule stating that the incumbent LEC may require information about a requesting carrier's intended use of a particular network element only where such information is reasonably necessary to prevent potential network harm. Any disputes in particular cases about whether an incumbent LEC's request for information meets this standard should be resolved through arbitration by State commissions, or other appropriate proceedings.

B. The Commission Should Reconsider the Issue of Sub-Loop Unbundling

MFS agrees with ALTS and MCI that the Commission should reconsider its decision not to proceed with sub-loop unbundling at this time. This issue was also discussed in MFS' Petition for Partial Reconsideration and Clarification, filed September 30, 1996, and MFS will not repeat its arguments here.

III. COLLOCATION ISSUES

A. The Commission Should Not Modify its Definition of LEC "Premises"

LECC argues that the Commission should reconsider its definition of "premises" because collocation in "vaults, huts, and other small field structures" is impractical. (LECC at 5-6.) However, as LECC acknowledges, para. 575 of the *1st R&O* makes it clear that an LEC is not required to offer collocation in any location where it is not technically feasible to do so, or where sufficient space is not available. The effect of the definition of "premises" simply is to require the incumbent LEC to *demonstrate* that collocation at a particular location is infeasible, instead of eliminating all possibility of collocation at broad classes of locations. MFS submits that the rule as

adopted by the Commission promotes competition, places only minimal burdens on incumbent LECs, and therefore should not be reconsidered.

B. The Commission Should Not Modify the Incumbent LECs' Duty to Permit Cross-Connection Between Two Collocated Carriers

LECC proposes that the Commission eliminate its requirement that incumbent LECs permit cross-connections between the facilities of two carriers collocated within the same central office building. (LECC at 6-8.) LECC does not claim that this requirement imposes any significant technical or economic burden on the incumbent LEC; rather, it argues that collocated carriers will receive an unfair cost advantage by being able to interconnect with each other at the LEC's premises. This argument is nonsense, since a requesting carrier would have to incur the very substantial cost of collocation in the first place before it could benefit from this "advantage." But, even assuming *arguendo* that LECC were correct in asserting that interconnection via collocation is less expensive than establishing a meet point or other form of interconnection between two requesting carriers, its argument amounts to a claim that incumbent LECs should be permitted to impose arbitrary restrictions on the use of collocated equipment for the sole and express purpose of increasing the costs of their competitors. The mere statement of this claim demonstrates how antagonistic it is to the letter and spirit of the Act. LECC's petition on this point should therefore be rejected.

C. Incumbent LECs Should Not Be Relieved of the Duty to Offer Virtual Collocation

LECC also asks the Commission to eliminate its rules requiring incumbent LECs to offer virtual collocation where technically feasible (LECC at 8-10), arguing that virtual collocation should only be a "substitute for physical collocation" where the latter is unavailable due to space limitations. LECC's argument simply ignores the language of Sections 251(c)(2) and (3) of the Act, which require incumbent LECs to provide interconnection and unbundled access, respectively, "at any

technically feasible point[.]" This language plainly precludes an incumbent LEC from insisting that interconnection or unbundled access take place solely within a central office, or at any other particular point. The Commission correctly did not interpret the word "point" in these subsections as referring solely to geographic location, but rather as including logical or functional "points" within a network. Interconnection by means of virtual collocation constitutes interconnection at a different "point" in the network than physical collocation, even though the geographic location of the connection may be the same in either case. The Commission's decision was therefore correct, and LECC's Petition should be rejected because the relief it seeks would be inconsistent with the express requirements of the Act.

D. The Commission Should Not Change Its Rules Regarding Relinquishment of Reserved Space for Virtual Collocation

LECC proposes that the Commission remove the requirement that incumbent LECs relinquish space reserved in a central office before denying a request for virtual collocation due to lack of space. (LECC at 10-11.) LECC argues that this requirement is unreasonable because space must be reserved for eventual switch replacements (because the new switch must be installed and tested alongside the old one before the old switch can be removed). It also contends that the Commission's rule gives requesting carriers an unreasonable preference over other users who might be served by the central office.

MFS believes that LECC's concern regarding switch replacement is addressed by the existing rule's provision that virtual collocation is not required where it is not technically feasible, and therefore no reconsideration is necessary. If relinquishment of particular reserved space would prevent a LEC from upgrading its switch (and there is absolutely no other space whatsoever that

could be used either for virtual collocation or for the new switch), then it would be technically infeasible to relinquish that space for virtual collocation.

LECC's argument concerning "preferential" treatment of requesting carriers is nonsense. If an incumbent LEC runs out of space in its central office to provide services to its end user customers, or to carriers desiring to purchase interexchange access, it will have to make other space available, expand its facilities, or make some other arrangements to provide the requested service. Requiring it to do the same thing for requesting carriers who desire virtual collocation does not give these carriers "preferential" treatment, but merely gives them the same level of priority as the incumbent LEC's other customers when space or other facilities prove to be inadequate. LECC's petition on this point should therefore be denied.

IV. RECIPROCAL COMPENSATION ISSUES

A. The Commission Should Strengthen, Not Dilute, Its Policy on Rate Symmetry

LECC suggests that the Commission should modify 47 CFR § 51.711(a)(3), which currently requires that the transport and termination charges for local calls paid by an incumbent LEC shall be equal to those paid by the requesting carrier where the requesting carriers' switch serves a geographic area comparable to the incumbent's tandem switch. LECC argues that this symmetry rule should only apply where the requesting carrier actually operates both tandem and end office switches. (LECC at 14-15.) MFS strongly disagrees, and instead agrees with Cox Communications, Inc. ("Cox") that the Commission should strengthen the symmetry rule and remove any ambiguity. (Cox at 3-8.)

MFS addressed this issue in its Petition for Partial Reconsideration and Clarification, and will not repeat those arguments here. LECC's petition is inconsistent with the intent of the Act for the

reasons explained in MFS' petition, and should be rejected. MFS agrees with Cox that rate symmetry should be based on the similarity of the *functions* being performed or the geographic area covered by the switching equipment of the respective carriers, and should not be based on the number of switches or the particular network configuration adopted by each carrier.

B. The Commission Should Not Dictate the Rating Points Associated with NXX Codes

Cox requests that the Commission clarify the provisions of paras. 1035 and 1036 of the *1st R&O* by confirming that these paragraphs do not restrict the ability of LECs or CMRS providers to assign NXX codes to locations other than the physical location of their switches. MFS agrees with Cox that the Commission's *1st R&O* should not be interpreted as limiting in any way the manner in which requesting carriers assign NXX codes, although Cox's discussion of the issue may be somewhat confusing.

An NXX code is simply a telephone number prefix that is assigned to a particular switch and is used to serve a discrete group of local exchange customers. In incumbent LEC networks, these customers are typically located within a defined geographic area (except for foreign exchange customers and other special arrangements). For purposes of *end user* billing, each NXX code is typically assigned to a particular "rate center," which is a fixed geographic location used for measuring distances. This "rate center" may or may not correspond to the physical location of the switch serving the NXX code. For purposes of *access* billing, however, transport charges are based on the actual physical location of the end office switch serving the NXX code (with some exceptions for host-remote arrangements), and not based on the "rate center." Unfortunately, Cox's petition refers to "rating points" without clearly differentiating between these two situations.

From the context of Cox's petition, however, it appears that Cox's major concern deals with "rate centers," since it seeks clarification that carriers may establish their own rating points "for the purpose of rating calls to their customers from customers of the incumbent LEC." MFS fully agrees that requesting carriers should be able to designate "rate center" points corresponding to each NXX code which may or may not correspond to the physical location of a switch or other interconnection point, consistent with state requirements.[3] In fact, as noted above, incumbent LECs are not required to designate "rate center" points that correspond to the physical locations of their switches, and there is no reason to imply such a requirement for new entrants.

Again, these "rate center" points are used solely for the purpose of billing end users for the calls they place. To the extent that charges *between carriers* for transport of traffic are based upon distance, it seems reasonable to base such transport charges, as distinct from end user charges, on the actual location of the point of interconnection.

V. THE COMMISSION SHOULD CLARIFY THAT NON-INCUMBENT LECS ARE NOT REQUIRED TO PRODUCE COST DATA IN NEGOTIATIONS

Both MCI and ALTS have requested that the Commission clarify that 47 CFR § 51.301(c)(8)(ii) applies only to incumbent local exchange carriers ("LECs"). This provision declares that "refusal by a requesting telecommunications carrier to furnish cost data that would be relevant to setting rates if the parties were in arbitration" is a violation of the duty to negotiate in good faith. As MCI notes, the language of the rule is inconsistent with the text of the *1st R&O* at para. 155, which makes clear that it is the *incumbent* LEC's duty to provide cost data. The rule as adopted

[3] As noted by Cox at footnote 12 of its Petition, some states affirmatively require that new entrants associate each NXX code with one of the rate centers previously established by the incumbent LEC, so that end user billing for all carriers can be based on a consistent set of rate center points.

makes no sense, since cost data in the possession of a requesting carrier would not be relevant to the determination of the *incumbent's* rates in an arbitration.[4] MFS agrees that the rule should be amended to be consistent with the text of the Order and with the Commission's evident intent.

Respectfully submitted,

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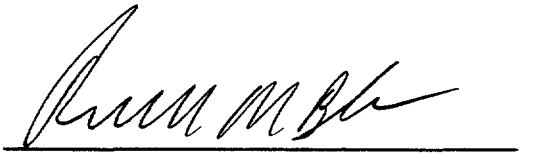
[4] The only instance in which a requesting carrier's rates would even be in issue in an arbitration would be in the context of reciprocal compensation for transport and termination of local calls. In that instance, the Commission has established a presumption that the requesting carrier's rates should be equal to those of the incumbent, so that cost data would be unnecessary. *1st R&O*, para. 1085.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October 1996 copies of MFS Communications Company, Inc.'s Response To Petitions For Reconsideration were served on the attached list by first class mail, postage prepaid.



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